(2000) 12 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No. 10319 of 2000

Rampati Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Rules, 1983 — Rule 7
Limitation Act, 1963 — Section 5

Citation : (2001) 1 PLJR 501

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the Petitioner has prayed for quashing of the order dated 3.4.2000, passed by the Commissioner, Patna Division, Patna in B.B.C. Revision Case No. 35 of 1997, contained in Annexure 8, whereby and where under delay of nearly 20 months in filing of the revision application has been condoned and the revision application has been admitted for hearing.

2. In short, the relevant facts are that the Petitioner is the owner of the house/ premises bearing Holding No. 61, Ward No. 11 in the town of Bhabhua, District Kaimur. The said premises was let out to the Assistant Commissioner, Commercial Taxes (Respondent No. 3) in the year 1978 as tenant. In the year 1984 the Petitioner moved the House Controller under the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, hereinafter referred to as the Act, for determination of fair rent of the premises in question. The House controller called for a report from the Circle Officer, Bhabhua Block regarding prevailing rate of rent in the locality and on consideration of the enquiry report submitted by the Anchal Adhikari in detail, the House Controller, Bhabhua fixed Rs. 3,000/- per month as the fair rent of the premises in question, vide order dated 23.8.1985 passed in Misc. Case No. 103/84.

3. Respondent No. 3 preferred an appeal before the Collector, Kaimur in which the parties agreed for Rs. 1500/- per month as rent of the premises in question with a condition for further enhancement of rent as and when deems to be necessary. The premises contained ten rooms of respectable size, a court-yard, two verandah, bath room and toilet covering a carpet area of about 2500 square feet. As there was considerable increase in the size of the premises and their repair and maintenance has also gone up, the Petitioner filed a petition before the House Controller for determination of the fair rent, vide Misc. Case No. 4/92-93. The House Controller after considering all aspects determined Rs. 3,000/- per month as fair rent with effect from 1.8.1992, vide order dated 29.9.1992.

4. Respondent No. 3 again filed appeal against the said order before the Collector, Kaimur, whereupon the Collector remanded the matter back to the House Controller for re-determination and enhancement of the rent of the premises in accordance with law. Subsequently, on remand, the House Controller after examining the law and after taking into consideration all the facts, determined Rs. 3000/- per month as fair rent, vide order dated 14.8.1995. Though the period of limitation for filing of the revision is only 15 days as provided under Rule 7 of the Rules framed under the Act, the Respondent authorities preferred revision on 11.4.1997 before the Commissioner, Patna Division and the same was registered as Revision Case No. 35/97. The said revision case was earlier dismissed in default on 8.5.1997 but on filing of the petition, it was restored, vide order dated 23.2.1998 and by the same order it was admitted for hearing.

5. The Petitioner challenged the validity of the order admitting revision application in C.W.J.C. No. 3371 of 1999 which was disposed of vide order dated 12.4.1999, contained in Annexure 5, whereby after setting aside the impugned order, the matter was remitted back to the Commissioner. It was directed by this Court that the Commissioner will proceed in the matter afresh in accordance with law. The Commissioner will first hear the parties on the question of limitation and if it is found that there were sufficient grounds for condoning the delay, then he would proceed to admit the revision application after condoning the delay in its filing.

6. The impugned order has been passed after the said remand of the matter by this Court. The Commissioner in the impugned order on careful consideration found that there has been unusual delay of 20 months on the part of the revision Petitioner. The reason for the said delay has been found due to the procedural wrangle obtaining in the Government offices which, according to the Commissioner, is inescapable. However, he has held that there has been no delay in filing of the revision petition on the part of revision Petitioner and, thus, condoned the delay and admitted the revision for hearing.

7. It has been submitted on behalf of the Petitioner that the Commissioner was not legally justified in condoning the delay of 20 months i.e. about 600 days

even after he found that the delay was unusual and was due to procedural wrangle obtaining in the Government Offices.

8. On the other hand, learned Counsel for the State has submitted that it is true that there has been unusual delay in filing of the revision application, but it has sufficiently been explained and as such, according to him, there is no infirmity in the impugned order. He also relied upon the decisions of the Apex Court in the case of State of Haryana Vs. Chandra Mani and others, as also in the case of State of Bihar v. Kameshwar Prasad Singh, reported in 2000 (3) PLJR (SC) 81. It is submitted by the learned Counsel for the State that the Apex Court in the case of State of Haryana v. Chandra Mani (supra) has held that sufficient cause of delay should be considered with pragmatism in justice-oriented manner and certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red-tapism. The Supreme Court in the said case has held that the State cannot be put on the same footing as an individual and the delay of 109 days in filing letters patent appeal before the High Court was found I to be condonable. It was also submitted I that in the case of State of Bihar v. Kameshwar Prasad Singh (supra) the Court condoned the delay of 679 days in filing the SLP to do justice as it was held that dismissing the appeal under such situation on technical grounds of delay would result in failure of justice.

9. Learned Counsel for the Petitioner in reply has placed reliance on a decision of the Apex Court in the case of Shanti Devi Vs. State of Haryana and Others, , where the Apex Court refused to condone the delay of 761 days. He also placed reliance on a decision of the Apex Court in the case of Sri Veera Hanuman Rice and Flour Mill and Another Vs. State Bank of India, Ramachandrapuram, A.P., , wherein it has been held that though the Bank being a Government-undertaking and a huge sum of public money being involved, necessarily some indulgence should be shown in considering the claims, of the parties, but it is no justification to omit even considering the specific and relevant factual contention urged by the Appellants regarding appearance in the court of the Advocate about whom it was pleaded that he was not well during that period, in other cases. He also placed reliance on the Division Bench judgment of this Court in the case of State Govt. of Bihar and Others Vs. Sunil Kumar Singh and Others, , wherein the Division Bench of this Court has held that a casual and careless approach of the State Government disentitles the Appellants from taking any benefit of Section 5. It was held that merely by making omnibus statements one cannot satisfy the requirements of condonation of delay and that the provision of Limitation Act does not extend any immunity relaxing the law of limitation in favour of the State and thus dismissed the appeal being barred by limitation.

10. In view of the law settled by the Apex Court, there cannot be any doubt that the approach in condoning the delay in filing of revision or appeal by the State Government, certain amount of latitude has to be given having regard to impersonal bureaucratic set-up, but it must be within a reasonable limit. The

delay is of nearly 20 months i.e. about 600 days and the only explanation is that on getting the knowledge of the order under revision on 31.8.1995, the Assistant Commissioner, Commercial Taxes, Bhabhua, vide letter No. 445 (A-1) dated 14.9.1995 wrote to the Commissioner, Commercial Taxes seeking certain instructions in the matter and subsequently, he vide various letters dated 5.11.95, 4.1.96, 29.2.96, 22.3.96, 22.8.96 and 2.9.96 sent reminders to the Commissioner, who eventually vide his letter dated 7.1.1997 instructed the Commercial Taxes Officer, Kaimur for filing a revision application before the Commissioner, Patna Division. Thereafter, the then Commercial Taxes Officer, was transferred and was relieved on 2.3.1997 and the new incumbent approached the A.G.P., vide letter dated 26.3.1997 for necessary action in the matter. The A.G.P. then applied on 3.4.1997 for certified copy of the order which was received on 7.4.1997 and finally the revision application was filed on 11.4.1997.

11. Thus, on their own said pleading, there has been gross laches on the part of the Commissioner, Commercial Taxes and thereafter even on the part of the Commercial Taxes Officer, Kaimur who on receipt of the letter of the Commissioner dated 7.1.1997 had to act promptly as the matter had already been delayed, but he slept over the matter again for about two months and was relieved on 2.3.1997 and this has caused delay of nearly 20 months. For such inaction, the authority concerned alone to be blamed and for that others cannot be made to suffer.

12. In the instant case, the Petitioner has been made to suffer so much so that she had to file suit for realisation of arrears of rent much after the expiry of the period of limitation for filing of revision only where after the authorities woke up when the suit was in progress and the evidences are almost complete. The Petitioner was made to suffer despite the order of the House Controller in her favour and she was made to run from pillar to post for realisation of lawful dues for years together.

13. In my opinion, the explanation for the delay at the Commissioner, Commercial Taxes level and at the level of the Commercial Taxes Officer, Kaimur is not sufficiently explained entitling the Respondents for condonation of delay. The delay has to be explained by sufficient cause and not by the inaction of the authority. The Commissioner, Patna Division, Patna thus, in my opinion, has committed serious error in condoning the delay and admitting the revision application.

14. Accordingly, the writ application is allowed, the impugned order, contained in Annexure 8, is quashed and consequently the revision application stands dismissed being barred by limitation. In the facts and circumstances, there shall be no order as to costs.